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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/538,744 | 03/30/2000 | Edward Jason White | KCC-14,867 | 8894 |

7590 10/22/2002

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 10/22/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-12

Office Action Summary

Application No. 09/538744 Applicant(s) White et al.
Examiner John Guarriello Group Art Unit 1771

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- ☒ Responsive to communication(s) filed on 6/27/2002, 7/30/2002
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-14, 29-42 is/are pending in the application.
- ☐ Claim(s) 29-38 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-14, 39-42 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other. _____

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DETAILED ACTION

15. The Examiner acknowledges papers # 9-11, the formal drawings of 6/27/2002; the fabric sample of 6/27/2002; and the affirmation of the Restriction regarding the election of Group I, claims 1-14 and 39-42. Group II, claims 29-38, drawn to the method are withdrawn as to non-elected invention. Since there are no arguments for traverse, the Restriction is made final for reasons of record.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restriction

17. Since there are no arguments for traverse, the Restriction is made final for reasons of record, and as noted above in paragraph # 15.

Claim Rejections - 35 USC § 112

18. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 2, line 1, it is still not clear what the term “lofty” refers in claim 1, since the term “lofty” does not appear in claim 1. This is a lack of clear antecedent basis. Applicant’s arguments regarding objection versus rejection have been considered but they are not persuasive because the scope of the claim is not that clear. Applicant has declined to correct the problem of a lack of clear antecedent basis.

Claim Rejections - 35 USC § 102

18. Claims 1-5, 12, 14, 39, 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Holtman 4,578,070.

Rejection is maintained substantially as in paper # 8 of 4/24/2002.

Applicant’s arguments regarding the addition of loft during web formation is a process limitation, and the claims even if directed to a product-by-process art still treated as a product. Furthermore, Figures 2, 3A and 3 still describe loop geometries. Regarding z-direction, Holtman describes “z-direction” but not in those terms as claimed by applicant but by describing transverse which corresponds to “z-direction”, since transverse is a perpendicular aspect from

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the xy plane. Furthermore, applicant argues a process limitation regarding the addition of loft, which implies a product-by-process evaluation and the product is what is being claimed, not the process of making.

Claim Rejections - 35 USC § 103

19. Claims 6-11, 13, 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holtman 4, 578,070.

Rejection is maintained substantially as in paper # 8 of 4/24/2002.

Applicant's arguments regarding the process limitation indicates a process-by-product consideration. Product-by-process claims are treated as products unless there is clear evidence to the contrary. Since the product appears to be the same or similar it still would be obvious to one of ordinary skill in the art taking the invention as a whole.

20. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first

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reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

October 4, 2002



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700